

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

POSA, INC.; S.K.P. EXPRESS CO.,
INC. (FORMERLY KNOWN AS J. POSA,
INC.); AND RIVERSIDE WAREHOUSE,
INC.

and

Cases 3--CA--8709,
3--CA--8789,
3--CA--8806, and
3--CA--9055¹

TEAMSTERS LOCAL 317,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF
AMERICA

DECISION AND ORDER

On 15 October 1981 the National Labor Relations Board issued an Order ² in the above-entitled proceeding in which it directed, inter alia, that Respondent, Posa, Inc., J. Posa, Inc., and Riverside Warehouse, Inc., its officers, agents, successors, and assigns, make certain employees whole for any loss of pay resulting from Respondent's unfair labor practices in violation of Section 8(a)(1) and (3) of the Act. On 18 May 1982 the United States Court of Appeals for the Second Circuit entered a judgment

¹ During the course of the hearing before the Administrative Law Judge, he granted the General Counsel's motion to withdraw Case 3--CA--9055.

² Not reported in volumes of Board Decisions.

enforcing in full the backpay provisions of the Board's Order. A controversy having arisen over the amount due under the terms of the Order, on 26 October 1982, the Regional Director for Region 3 issued and served a backpay specification and notice of hearing on Respondent at the addresses Respondent designated for service of process with the State of New York Department of State. An authorized agent of Respondent received a copy of the backpay specification and notice of hearing on 2 November 1982, at its Posa, Inc., 122 Kingsland Avenue, Brooklyn, New York, address. Respondent did not file an answer to the specification.

On 24 February 1983 the Regional Director issued an Order postponing the hearing indefinitely because Respondent failed to answer the backpay specification. The Order stated that counsel for the General Counsel intended to move the Board for an Order transferring this proceeding to the Board and for an Order Granting Summary Judgment in favor of the General Counsel on the backpay specification. A copy of the Order was served on Respondent at the places designated for service of process with the Secretary of State for the State of New York on 24 February 1983. A copy of the Order was also served on Respondent at its 122 Kingsland Avenue, Brooklyn, New York, address on 7 March 1983. Respondent did not accept service of the Order at either address.

On 31 March 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 6 April 1983, the Board issued an Order transferring the proceeding to the Board and a Notice To Show

Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54(c) of the Board's Rules and Regulations, Series 8, as amended, provides, in relevant part, with respect to a backpay specification:

(c) Effect of failure to answer or to plead specifically and in detail to the specification.--- If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. . . .

The backpay specification duly served on Respondent specifically states that, pursuant to Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, Respondent shall, within 15 days from the date of the specification, file with the Regional Director an original and four copies of an answer to the specification. To the extent that the answer fails to deny the specification's allegations in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to

be admitted to be true, and Respondent shall be precluded from introducing any evidence controverting them. As of 24 March 1983, the date of the Motion for Summary Judgment, Respondent has not filed either an answer to the specification, nor a response to the Notice To Show Cause.

Because Respondent has not filed an answer to the specification or offered any explanation for its failure to do so, in accordance with the rules set forth above, the Board deems Respondent to have admitted all the allegations of the specification to be true, and there are no matters in issue requiring a hearing. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the specification and the entire record in this case, the Board makes the following:

Findings of Fact

We find that Edward Calkins, Allen Charron, Robert Coleman, Charles Henry, Joseph Henry, and William Thurlow are entitled to be made whole under the terms of the Board's Order by the payment to them of the amounts as summarized and calculated in the General Counsel's backpay specification; namely, by payments of \$2,692.70 to Edward Calkins; \$872.33 to Allen Charron; \$2,107.29 to Robert Coleman; \$2,225.22 to Charles Henry; \$2,016.14 to Joseph Henry; \$1,977.76 to William Thurlow; plus interest accrued to the date of payment, minus the tax withholdings required by Federal and state laws.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Posa, Inc.; S.K.P Express Co., Inc. (formerly known as J. Posa, Inc.); and Riverside Warehouse, Inc., Fulton, New York, its officers, agents, successors, and assigns, shall make whole the employees named below, by payment to them of the amounts following their names, plus interest, accrued to the date of payment to be computed in the manner set forth in Florida

Steel Corporation, 231 NLRB 651 (1977), less tax withholdings required by Federal and state laws. See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962):

Edward Calkins	\$2,692.70
Allen Charron	\$ 872.33
Robert Coleman	\$2,107.29
Charles Henry	\$2,225.22
Joseph Henry	\$2,016.14
William Thurlow	\$1,977.76

Dated, Washington, D.C.

3 November 1983

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Patricia Diaz Dennis, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD